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7 UNITED STATES DISTRICT COURT
8 CENTRAL DISTRICT OF CALIFORNIA
9 WESTERN DIVISION
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11 LAURIE MACHUT,) No. CV 12-05220-VBK
12)
13 Plaintiff,) MEMORANDUM OPINION
14) AND ORDER
15 v.)
16) (Social Security Case)
17 CAROLYN W. COLVIN, Acting)
18 Commissioner of Social)
19 Security,)
20)
21 Defendant.)
22 _____)
23)
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18 This matter is before the Court for review of the decision by the
19 Commissioner of Social Security denying Plaintiff's application for
20 disability benefits. Pursuant to 28 U.S.C. §636(c), the parties have
21 consented that the case may be handled by the Magistrate Judge. The
22 action arises under 42 U.S.C. §405(g), which authorizes the Court to
23 enter judgment upon the pleadings and transcript of the Administrative
24 Record ("AR") before the Commissioner. The parties have filed the
25 Joint Stipulation ("JS"), and the Commissioner has filed the certified
26 AR.

27 Plaintiff raises the following issues:

28 1. Whether the Administrative Law Judge's ("ALJ") finding on

1 Plaintiff's residual functional capacity is not supported by
2 substantial evidence and whether the relied-upon
3 hypothetical question to the vocational expert was
4 incomplete and inaccurate;

5 2. Whether the ALJ improperly rejected the opinions of
6 Plaintiff's treating sources; and

7 3. Whether the ALJ improperly discredited the testimony of
8 Plaintiff and her mother.

9 (JS at 3.)

10
11 This Memorandum Opinion will constitute the Court's findings of
12 fact and conclusions of law. After reviewing the matter, the Court
13 concludes that for the reasons set forth, the decision of the
14 Commissioner must be reversed and the matter remanded.

15
16 I

17 **THIS MATTER WILL BE REMANDED FOR A NEW HEARING**

18 **TO FULLY CONSIDER MENTAL HEALTH EVIDENCE**

19 From a mental health standpoint, this is a complex case. The ALJ
20 determined that Plaintiff has severe impairments of bipolar disorder
21 and attention deficit hyperactivity disorder, with alternative
22 diagnoses of major depressive disorder and a learning disorder. (AR
23 18.) Largely based upon her reliance on the evaluations of two State
24 Agency physicians, Drs. Lee and Leaf (respectively, AR 500-513, 550-
25 563), the ALJ determined that Plaintiff's Residual Functional Capacity
26 ("RFC") would allow her to perform simple repetitive tasks not
27 requiring a rapid pace or high production quota; and limitation to
28 occasional interaction with the general public. (AR 20.)

1 Plaintiff raises a number of issues with the ALJ's mental RFC
2 determination. First, Plaintiff makes an unchallenged assertion that
3 the State Agency physicians prepared their reports and rendered their
4 opinions before the administrative file contained records from
5 Plaintiff's treating psychologist, Dr. Gantt, covering the period
6 2006-2010; her former psychiatrist, Dr. El-Asyouty (AR 714-718); and
7 her current psychiatrist, Dr. De Guzman. (AR 634-636, 728-732).
8 Plaintiff further asserts that the RFC finding fails to accurately
9 reflect the opinions of Drs. Lee and Leaf, in that it does not address
10 seven areas of functioning where Dr. Lee opined that Plaintiff had
11 "moderate" mental limitations. Dr. Leaf adopted these limitations.
12 Instead, the ALJ determined that Plaintiff has moderate impairments in
13 three areas: (1) activities of daily living; (2) social functioning;
14 and (3) concentration, persistence or pace. (AR 20.) Plaintiff thus
15 contends that the ALJ's RFC limitation does not adequately encompass
16 or reflect Dr. Lee's complete opinion.

17 Plaintiff also asserts that the hypothetical question posed to
18 the vocational expert ("VE") was incomplete in that it failed to
19 include all the exertional and non-exertional limitations which apply
20 to Plaintiff.

21 The Commissioner's contention is that the ALJ properly relied
22 upon the non-examining State Agency physicians because their opinions
23 were corroborated by treating physician Dr. De Guzman.

24 Plaintiff does raise an issue concerning her physical limitations
25 based upon obesity. The Commissioner responds that obesity was never
26 alleged as a physical impairment until this litigation and that, in
27 any event, there is no evidence that any physical impairments from
28 which Plaintiff suffers were inadequately controlled with medication.

1 **A. Applicable Law.**

2 In evaluating mental impairments, 20 C.F.R. §404.1520a(c)(3)(4)
 3 and §416.920a(c)(3)(4) mandate that consideration be given, among
 4 other things, to activities of daily living ("ADLs"), social
 5 functioning; concentration, persistence, or pace; and episodes of
 6 decompensation. These factors are generally analyzed in a Psychiatric
 7 Review Technique Form ("PRTF"). The PRTF is used at Step Three of the
 8 sequential evaluation to determine if a claimant is disabled under the
 9 Listing of Impairments; however, the same data must be considered at
 10 subsequent steps unless the mental impairment is found to be not
 11 severe at Step Two. See SSR 85-16.

12 20 C.F.R. §§404.1520a(c)(1) and 416.920a(c)(1) require
 13 consideration of "all relevant and available clinical signs and
 14 laboratory findings, the effects of your symptoms, and how your
 15 functioning may be affected by factors including, but not limited to,
 16 chronic mental disorders, structured settings, medication and other
 17 treatment."¹

18 SSR 85-16 suggests the following as relevant evidence:

19 "History, findings, and observations from medical
 20 sources (including psychological test results), regarding
 21 the presence, frequency, and intensity of hallucinations,
 22 delusions or paranoid tendencies; depression or elation;
 23 confusion or disorientation; conversion symptoms or phobias;

24
 25 ¹ 20 C.F.R. §404.1545(c) and §416.945(c) also require
 26 consideration of "residual functional capacity for work activity on a
 27 regular and continuing basis" and a "limited ability to carry out
 28 certain mental activities, such as limitations in understanding,
 remembering, and carrying out instructions, and in responding
 appropriately to supervision, co-workers, and work pressures in a work
 setting."

1 psycho-physiological symptoms, withdrawn or bizarre
2 behavior; anxiety or tension. Reports of the individual's
3 activities of daily living and work activity, as well as
4 testimony of third parties about the individual's
5 performance and behavior. Reports from workshops, group
6 homes, or similar assistive entities."

7
8 It is also required under §404.1520a(c)(2) and §416.920a(c)(2)
9 that the ALJ must consider the extent to which the mental impairment
10 interferes with an "ability to function independently, appropriately,
11 effectively, and on a sustained basis" including "such factors as the
12 quality and level of [] overall functional performance, any episodic
13 limitations [and] the amount of supervision or assistance []
14 require[d]."

15 Pursuant to the September 2000 amendments to the regulations
16 which modify 20 C.F.R. §404.1520a(e)(2) and §416.920a(e)(2), the ALJ
17 is no longer required to complete and attach a PRTF. The revised
18 regulations identify five discrete categories for the first three of
19 four relevant functional areas: activities of daily living; social
20 functioning; concentration, persistence or pace; and episodes of
21 decomposition. These categories are None, Mild, Moderate, Marked, and
22 Extreme. (§404.1520a(c)(3), (4).) In the decision, the ALJ must
23 incorporate pertinent findings and conclusions based on the PRTF
24 technique. §404.1520a(e)(2) mandates that the ALJ's decision must show
25 "the significant history, including examination and laboratory
26 findings, and the functional limitations that were considered in
27 reaching a conclusion about the severity of the mental impairment(s).
28 The decision must include a specific finding as to the degree of

1 limitation in each of the functional areas described in paragraph (c)
2 of this section."

3 The Step Two and Three analyses (see Decision at AR 53-54) are
4 intended to determine, first, whether a claimant has a severe mental
5 impairment (Step Two), and if so, whether it meets or equals any of
6 the Listings (Step Three). It is also required under §404.1520a(c)(2)
7 and §416.920a(c)(2) that the ALJ must consider the extent to which the
8 mental impairment interferes with an "ability to function
9 independently, appropriately, effectively, and on a sustained basis"
10 including "such factors as the quality and level of [] overall
11 functional performance, any episodic limitations [and] the amount of
12 supervision or assistance [] require[d]."

13 These findings and conclusions are relevant to the Step Two and
14 Three analysis of whether a claimant has a severe mental impairment,
15 and if so, whether it meets or equals any of the Listings. (See 20
16 C.F.R. Part 4, subpart p, App. 1.) The discussion in Listing 12.00,
17 "Mental Disorders," is relevant:

18 "The criteria in paragraphs B and C describe
19 impairment-related functional limitations that are
20 incompatible with the ability to do any gainful activity.
21 The functional limitations in paragraphs B and C must be the
22 result of the mental disorders described in the diagnostic
23 description, that is manifested by the medical findings in
24 paragraph A.

25 In Listing 12.00C, entitled 'Assessment of Severity,'
26 it is stated that, 'we assess functional limitations using
27 the four criteria in paragraph B of the Listings: Activities
28 of daily living; social functioning; concentration;

1 persistence, or pace; and episodes of decompensation. Where
2 we use 'marked' as a standard for measuring the degree of
3 limitation, it means more than moderate but less than
4 extreme."

5
6 Social Security Ruling ("SSR") 96-8p makes the same point in
7 distinguishing evidence supporting a rating of mental severity at Step
8 Two, a Listing level impairment at Step Three, and the determination
9 of an individual's MRFC at Step Four.

10
11 **B. Plaintiff's History of Mental Health Treatment.**

12 The record indicates that Plaintiff received continuous mental
13 health treatment from various medical sources between 2006 and 2010.
14 She began her treatment with Dr. Gantt on September 6, 2006 treating
15 with Dr. Gantt for 51 sessions through August 4, 2010. (AR 672-710,
16 724-727.)

17 From April 2006 to August 2008, Plaintiff was treated on 23
18 occasions for both mental and physical impairments by various
19 physicians at Central Coast Family Care. (AR 402-480.) In April 2006,
20 Dr. John Okerblum diagnosed Plaintiff as suffering from depression
21 with anxiety and Attention Deficit Disorder ("ADD"), and further noted
22 that because her medications were both ineffective and caused negative
23 side effects, he determined to refer Plaintiff for psychiatric
24 evaluation by Dr. El-Asyouty, who then treated Plaintiff in 2006. (AR
25 477-480, 714-718.)

26 The record would support a conclusion that between 2006 and 2008,
27 Plaintiff's condition was unstable and deteriorating. Dr. Gantt made
28 a notation in March 2008 that Plaintiff had been suicidal and in April

1 2008, she was hearing voices in her head, reported major mood swings,
2 and was severely depressed. (AR 696.) Shortly thereafter, in May
3 2008, Plaintiff told Dr. Gantt that she lost her job as a recess
4 monitor at school because she was screaming at the children, told the
5 Vice Principal that she was bipolar, and the children made fun of her.
6 Plaintiff was hospitalized for her mental condition in May 2008. At
7 that time, she was taking a variety of medications including Lithium,
8 Loestrin, Lexapro, Geodon, Atenoll, Phentermine, and Abilify.
9 Following a seven-day hospitalization, the Lexapro and Phentermine
10 were discontinued, and Plaintiff began taking Strattera, Colnazapam,
11 and Cymbalta. (AR 693, 700.) From this record alone, it would be
12 difficult to conclude that Plaintiff was capable of full-time
13 employment during this time period. Of course, in her Application
14 Plaintiff alleged that she has been disabled since April 30, 2008, so
15 the relevant question is whether Plaintiff's condition improved after
16 her hospitalization such that it would be fair to conclude she was
17 capable of full-time employment.

18 In November 2008, Plaintiff was assessed by clinical
19 neuropsychologist Dr. Wylie, who summarized the results of cognitive
20 functioning tests with a diagnosis on Axis I of major depressive
21 disorder, generalized anxiety disorder, and learning disorder NOS. (AR
22 548.)

23 The ALJ discussed the findings of treating psychologist Dr. De
24 Guzman from October 2010. (AR 22-23.) In part, the ALJ noted that Dr.
25 De Guzman reported bipolar disorder and improvement in compulsive
26 shopping, and that Plaintiff's mood was more stable at times. The ALJ
27 noted that Dr. De Guzman rendered a guarded prognosis, concluding that
28 Plaintiff would likely need continued support from her parents.

1 Further noted were Dr. De Guzman's assessment of moderate limitations
2 in Plaintiff's ability to remember work-like procedures; maintain
3 attention for two-hour increments; maintain regular attendance and be
4 punctual within customary tolerances; sustain an ordinary routine
5 without special supervision; work in coordination with or proximity to
6 others without being unduly distracted; make simple work-related
7 decisions; complete a normal work day/week without interruptions from
8 psychologically based symptoms; perform at a consistent pace without
9 an unreasonable number and length of rest periods; accept instructions
10 and respond appropriately to criticism from supervisors; get along
11 with co-workers or peers without unduly distracting them or exhibiting
12 behavioral extremes; respond appropriately to changes in a routine
13 work setting; deal with normal work stress; be aware of normal hazards
14 and take appropriate precautions; understand, remember and carry out
15 detailed instructions; deal with semi-skilled and skilled work; and
16 interact appropriately with the general public. Dr. De Guzman
17 expected that due to her mental health impairments, Plaintiff would be
18 absent from work more than four days per month. (AR 730-731.)

19 Despite this plethora of moderate mental health limitations, the
20 ALJ did not indicate whether she accepted or rejected all or any of
21 the conclusions rendered by Dr. De Guzman. Certainly, if Dr. De
22 Guzman is correct that Plaintiff would be expected to be absent from
23 work more than four days per month, then in a one-year period this
24 would amount to almost 50 days, which would likely render Plaintiff
25 unemployable. Of further concern to the Court is that even in 2010,
26 when Dr. De Guzman wrote this report, she noted something which many
27 of Plaintiff's mental health professionals had also regularly
28 recognized, which is that, in Dr. De Guzman's words, "Despite her

1 compliance with her medications, individual therapy, and family
2 support, patient's stability has always been brief that she has not
3 been able to work at a regular job." (AR 732.) If this conclusion is
4 accepted, again, a very definite question is raised as to Plaintiff's
5 employability. Yet, the Court does not consider that the ALJ
6 adequately weighed this evidence, or determined whether to accept it
7 or reject it. In that regard, the Decision's reliance on earlier,
8 non-examining State Agency physicians to render a mental RFC is
9 troubling. Plaintiff has a very long history of mental health
10 treatment, and has uniformly been diagnosed on Axis I with serious
11 disorders. Based on all the evidence in the record, the Court must
12 conclude that substantial evidence does not support the ALJ's RFC
13 determination. As in many cases involving mental health issues, there
14 are often times when medications may work better than at other times,
15 or a patient may show some improvement. But in Plaintiff's case,
16 there would appear to be a well-documented history of instability,
17 unsuccessful response to medications, and ongoing issues which relate
18 directly to Plaintiff's ability to be employed. For this reason, the
19 Court agrees with the position articulated by Plaintiff as to the
20 mental health issues in dispute in this case, and will remand for
21 further hearing to address these issues.²

22 Further, on remand, the ALJ will examine whether Plaintiff is
23 obese, and if so, whether her obesity has any impact on her asthma and
24 knee problems. Further, a determination will be made as to whether

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26 ² Concerning Plaintiff's argument in Issue 1 that the ALJ
27 erred in failing to address all mental functioning limitations
28 assessed by Dr. De Guzman, this is not necessarily correct. Rather,
an ALJ is required to specifically address the relevant categories
identified in the regulations (see infra at pp. 5-6). See Thomas v.
Barnhart, 278 F.3d 947, 956 (9th Cir. 2002).

1 Plaintiff has any deleterious side effects from her medication which
2 are relevant to assessing her ability to work.

3 Finally, with regard to the third issue, concerning the
4 evaluation of Plaintiff's credibility and the consideration of the
5 evidence from Plaintiff's mother, the Commissioner argues that based
6 on the ALJ's determination that Plaintiff "stabilized with medication"
7 (AR 23), Plaintiff's subjective testimony could legitimately be
8 rejected as not fully credible. But as the Court has indicated, there
9 are serious questions to be resolved as to whether Plaintiff's
10 medication in fact has stabilized her mental health condition so as to
11 render her employable, and whether there are side effects from her
12 medications. In addition, the Court rejects the Commissioner's
13 contention that the testimony of Plaintiff's mother was cumulative to
14 her own testimony. Indeed, it can reasonably be viewed that the
15 testimony of Plaintiff's mother might provide corroboration, for
16 example, of Dr. De Guzman's conclusion that Plaintiff would miss about
17 four days of work per month due to her mental condition. This was the
18 exact testimony offered by Plaintiff's mother. Consequently, the
19 Court orders that on remand, the determination of Plaintiff's
20 credibility and the weight to be afforded to the testimony of her
21 mother will be reevaluated do novo.

22 For the foregoing reasons, this matter will be remanded for
23 further hearing consistent with this Memorandum Opinion.

24 **IT IS SO ORDERED.**

25
26 DATED: July 25, 2013

/s/
VICTOR B. KENTON
UNITED STATES MAGISTRATE JUDGE